

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LARRY HARPER, JR.,

Plaintiff,

v.

Case No. 2:20-cv-11138

District Judge Laurie J. Michelson

Magistrate Judge Anthony P. Patti

MICHAEL JOHNSON,

Defendant.

**ORDER GRANTING PLAINTIFF'S MOTION TO AMEND THE
COMPLAINT (ECF No. 10), DENYING AS MOOT PLAINTIFF'S EXCESS
MOTION TO AMEND (ECF No. 12) AND RECOGNIZING PLAINTIFF'S
PROPOSED AMENDED COMPLAINT AS THE OPERATIVE PLEADING**

A. Background

Plaintiff Larry Harper, Jr., a state prisoner proceeding without the assistance of counsel, filed his complaint against two Defendants, Michael Johnson and James A. Parker, as well as his application to proceed without prepayment of fees, on April 18, 2020. (ECF Nos. 1 & 2.) The Court granted Plaintiff's application on May 15, 2020 (ECF No. 4), and on July 2, 2020, entered an order dismissing Defendant Parker from the lawsuit and directing the United States Marshal Service (USMS) to serve Defendant Johnson at the Detroit Police Department (ECF No. 5). The USMS acknowledged receipt of the service documents on August 11, 2020 (ECF No. 7), and the undated certificate of service was returned executed and

filed on December 18, 2020 (ECF No. 9). Counsel entered an appearance on Defendant Johnson's behalf on March 4, 2021. (ECF No. 13.) Defendant James A. Parker having been dismissed from this case on July 2, 2020 (ECF No. 5), all Defendants have now been served. The case was referred to me for all pretrial matters on November 23, 2020. (ECF No. 8.)

On January 9, 2021 (and signed on January 4th), but not docketed until January 22, 2021, Plaintiff filed a motion to amend his complaint pursuant to Federal Rule of Civil Procedure 15(a), requesting leave to amend to remove Defendant Parker from the complaint following the Court's order dismissing him from the lawsuit. (ECF No. 10, PageID.68-73.)¹ Plaintiff states in the motion that he filed a previous motion to amend on December 28, 2020, but failed to attach his proposed amended complaint (ECF No. 10, PageID.68), prompting him to file another motion and proposed amended complaint (without a caption), which appears to remove any reference to Defendant Parker (ECF No. 10, PageID.74-109). The Undersigned assumes that Plaintiff's reference to an earlier motion to amend was to ECF No. 12 which, although docketed on January 28, 2021, after the

¹ Plaintiff also filed, that same day, a separate "(proposed) amended complaint." (ECF No. 11.) A review of the document reveals that it is a *pro se* prisoner complaint form on which Plaintiff wrote "see attachment" in each of the substantive portions. (ECF No. 11.)

motion to amend at ECF No. 10, is dated December 28, 2020, and contains no attached proposed amended complaint. (ECF No. 12.)

B. Plaintiff's Motion to Amend

Fed. R. Civ. P. 15(a) provides, in pertinent part, that “[a] party may amend its pleading once as a matter of course within . . . 21 days after serving it, or . . . if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.” Fed. R. Civ. P. 15(a)(1)(A) & (B). If the Court considers December 18, 2020, to be the date Defendant Johnson was served (*see* ECF No. 9), Plaintiff filed his motion to amend (ECF No. 10) 22 days after serving his original complaint. Nevertheless, because Plaintiff filed his motion to amend prior to service of a responsive pleading (which the Court has not ordered) or service of a motion under Rule 12(b), (e), or (f), the motion (ECF No. 10) is **GRANTED**, as leave to file an amended pleading is not necessary at this juncture, and Plaintiff's excess motion to amend (ECF No. 12) is **DENIED AS MOOT**.

C. Operative Pleading

In order to save Plaintiff from the tedious task of re-copying the entirety of his 34-page proposed amended complaint by hand, the Court hereby recognizes ECF No. 10, PageID.74-108 as the operative pleading going forward in this matter, without the need for re-filing.

IT IS SO ORDERED.

Dated: March 5, 2021



Anthony P. Patti
UNITED STATES MAGISTRATE JUDGE